

REMARKS

Applicant claims the benefits of the priority of Serial No. 09/199,669 (“the ‘669 application”), filed November 25, 1998, of which this application is a continuation. The specification has been amended to reflect the continuation in the section headed “Cross-Reference to Related Applications.” A copy of the original specification of the ‘669 application is filed herewith.

The specification is further amended herein to reflect the fact that related application Serial No. 09/190,764 matured into patent No. US 6,208,741 on March 27, 2001.

Original claims 1-97 have been allowed in the ‘669 application. Claims 1, 3, 4, 37, 45 and 49, as amended herein, provide a somewhat different definition of applicant’s invention from those of the correspondingly-numbered original claims. The others of claims 1-97, as well as claims 106-110, 112, 113, 122 and 124-140 are canceled herein. Applicant is prepared to file a terminal disclaimer in this application upon issuance of a patent from the ‘669 application, in view of applicant’s election in response to examiner’s restriction requirement in the ‘669 application. Non-elected claims 138-140 as well as related claims 125-137 are addressed in a separate continuation of the ‘669 application filed on even date herewith.

A proposed drawing correction is submitted with this Amendment to overcome examiner’s objection to the drawings in the ‘669 application for use of the same reference character to designate both “cap body” and “guard member.” Designation of the latter is changed herein to -- 65” --. The proposed drawing correction is shown on a marked-up copy labeled “Annotated Sheet Showing Changes” to comply with the revised amendment practice of 37 CFR 1.121. In addition, the specification is amended herein by submitting a replacement paragraph to show the correction.

Examiner’s objection to the specification in the ‘669 application as failing to provide proper antecedent basis for claimed subject matter is believed to be inapplicable since claim 109, the subject of the objection, is canceled by this Amendment.

In the ‘669 application:

(1) original claims 98, 100-102, 104-106, 112-115, 118, 119, 123 and 124 were

rejected under 35 U.S.C. 102(e) as being anticipated by Fletcher US 6,212,283 (“Fletcher”);

(2) original claims 99, 107, 108, 110, 111, 116, 117, 120 and 121 were rejected under 35 U.S.C. 103(a) as being unpatentable over Fletcher in view of Garcia US 5,743,692 (“Garcia”); and

(3) original claims 103 and 122 were rejected under 35 U.S.C. 103(a) as being unpatentable over Fletcher.

These rejections are respectfully traversed, but will be addressed in terms of the claims as amended herein. Applicant wishes to stress that the amendment of claims herein is solely for the sake of clarification.

Independent main claim 98, as amended, calls for, among other things, a semi-permanent hearing device adapted for insertion and long-term wear in the ear canal, including a core assembly with a portion adapted to extend laterally and non-occludingly within the ear canal medially past the aperture thereof when the hearing device is fully seated in the ear canal; and a sealing retainer fabricated and adapted to seat within and occlude the bony region of the ear canal and to snugly support the core assembly along the longitudinal axis of the ear canal in the bony region when the hearing device is fully seated in the ear canal, to provide acoustic sealing of the bony region to prevent feedback.

Fletcher is directed primarily to a ball joint assembly for articulated hearing devices that acoustically and mechanically separates a receiver module placed deeply in the ear canal near the tympanic membrane from a main module placed distal thereto, that allows independent and free movement of the receiver module with respect to the main module, and that has a central axial conduit for conducting electrical wiring from the main module to the receiver module, along with built-in rotational stops. As shown most clearly in the transverse plane view of Fletcher’s FIG. 3 (as well as FIGS. 16 and 17), the hearing device is not adapted to (nor can it) be inserted entirely within the ear canal past the aperture 24 (Fletcher’s FIG. 2). In contradistinction to examiner’s assertion, Fletcher’s main module 40 clearly extends in a direction outwardly (i.e., distally relative to the tympanic membrane) from the ear canal past the aperture 24. Applicant’s claim 98 has been amended to, among other things, indicate that “past the aperture” refers to medially past the aperture. Further, Fletcher’s main

module 40 has a main housing 41 that contains the customary hearing aid components (other than receiver 54 of receiver module 50), and that clearly (again, Fletcher's FIG. 3) occludes the aperture (aside from occlusion in the bony region 25. In contrast, amended claim 98 calls for the core assembly portion to extend laterally and non-occludingly within the ear canal medially past the aperture.

These claim limitations recite features that are important to achieving applicant's objectives of a hearing device suitable to be completely positioned in the ear canal (and thus, inconspicuous), that occludingly seals the ear canal in the bony region, but not elsewhere, and that is semi-permanent for long-term use in the ear canal, the latter terminology being defined in applicant's specification as meaning continuous placement and use of the hearing device within the ear canal without any removal, daily or otherwise, for at least a month.


Garcia has been studied by applicant, but is not found to cure the deficiencies of Fletcher as a reference against main claim 98.

Accordingly, it is respectfully submitted that the rejection of claim 98 should be withdrawn. Since each of the other claims that were rejected in the parent '669 application (the rejections labeled (1), (2) and (3), above) pertain to claims that are either dependent from claim 98 or that have been canceled by this Preliminary Amendment, it is submitted that they, too, are patentable over Fletcher and any rational combination of Fletcher with Garcia.

A Replacement Sheet for the corrected drawing will be filed as soon as the correction is approved by the examiner. Early examination and, in view of the above amendments and remarks, allowance of this application are solicited.

Respectfully submitted,

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Enclosures

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